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IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1980

NO. _____

MS. L. WEBER
Petitioner

- AGAINST -

NORMAN W. BLACK
T. R. CONEY
Respondents

PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI
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FOR THE FIFTH CIRCUIT

Petitioner Ms. L. Weber prays that a writ of certiorari issue to review the judgment rendered January 13, 1981 by the United States Court of Appeals For The Fifth Circuit affirming the lower trial court's judgment.

OPINIONS BELOW

The opinion by the United States Court of Appeals For the Fifth Circuit is set forth in the Appendix (A-1a)

The Orders and Final Judgment of the Trial Court For the Southern District of Texas, Houston Division is set forth in the Appendix (B-2a).

JURISDICTION

The jurisdiction of this Court is invoked under 28 U.S.C. 2101 (C).

THE CONSTITUTIONAL PROVISIONS AND UNITED STATES STATUTES

CONSTITUTION OF THE UNITED STATES

FOURTH AMENDMENT

> "The right of the people to be secure in their persons,...shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation..."

FIFTH AMENDMENT

"No person...shall be...deprived of life, liberty, or property, without due process of law..."

CONSTITUTION OF THE STATE OF TEXAS

"No citizen of this State shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised, except by the due course of the law of the land." Article 1, Section 19.

STATUTES OF THE UNITED STATES

TITLE 28 USC 636

"(a) Each United States magistrate serving under this chapter shall have within the territorial jurisdiction prescribed by his appointment. (1) all powers and duties conferred or imposed upon United States Commissioners by law or by the Rules of Criminal Procedure for the United States District Courts; (2) the power to administer oaths and affirmations, impose conditions of release under Section 3146 of Title 18...."

(b)(1) notwithstanding any provision of law to the contrary - (A) a judge may designate a magistrate to hear and determine any pretrial matter pending before the court,... (3) a magistrate may be assigned such additional duties as are not inconsistent with the Constitution and laws of the United States..."

TITLE 28 USC 1446 (a)

"(a) a defendant or defendants desiring to remove any civil action ... shall file in the district court ... a verified petition containing a short and plain statement of the facts which entitles him or them to removal ...".

TITLE 28 USC 1654

"In all courts of the United States the parties may plead and conduct their own case personally or by counsel..."

RULE 56, FEDERAL RULES OF CIVIL PROCEDURE

"(C)... The judgment sought shall be rendered forthwith...if... there is no genuine issue as to any material fact..."

TITLE 28 USC 2241

"(a) Writs of habeas corpus may be granted by the Supreme Court, any justice thereof, the district courts and any circuit judge within their respective jurisdiction. The order of a circuit judge shall be entered in the records of the district court wherein the restraint complained of is had..."

TITLE 18 USC 3041

"For any offense against the United States, the offender may, by any justice or judge of the United States, or by any United States magistrate, or by any chancellor,... mayor of a city, justice of peace, or... be arrested and imprisoned, or released as provided in Chapter 207 of this title (3141 et seq.)...

A United States judge or magistrate shall proceed under this section..."

TITLE 18 USC 3146

"(a) any person charged with an offense, other than an offense punishable by death, shall, at his appearance before a judicial officer, be ordered released pending trial on his personal recognizance or upon the execution of an unsecured appearance bond... unless the officer determines...that such a release will not reasonably assure the appearance of the person as required... (d) A person for whom conditions of release are imposed and who after twenty-four hours from the time of the release hearing continues to be detained as a result of his inability to meet the conditions of release, shall,... be entitled to have the conditions reviewed by the Judicial officer who imposed them."

Rule 9, Federal Rules of Criminal Procedure, Title 18, U.S.C. (In January and February 1978)

> "(1) Warrant. The form of the warrant shall be as provided in Rule 4 (c)(1) except that ... it shall describe the offense charged in the defendant be arrested and brought before the court or if ... charges a minor offense, before a United States magistrate."

QUESTIONS PRESENTED

Where a Federal Rule of Criminal Procedure authorizes and empowers the U.S. attorney and/or court to issue a warrant on a supposedly indictment unsupported by a visible oath or affirmation is such a statute unconstitutional and void as violate of the Fourth Amendment to the U.S. Constitution.

Where a United States Magistrate manages and directs a defendant's action who is in custody and conducts all proceedings pertaining to the defendant which are prohibited by U.S. Statutes and Rules of Criminal Procedure, including an Habeas Corpus trial (pursuant to Title 28 USC 2241, which was not a post-conviction application) does not the U.S. magistrate act in abscence of all jurisdiction and is libel for the continued incarceration of the defendant.

Where a United States Marshal refuses, for many days, to obey a court order to bring petitioner forthwith to a U. S. District Court who had already set conditions of bail, and instead took the petitioner to a U. S. Magistrate who did not have jurisdiction, does he have immunity from liability.

Where Title 28USC 1446 (a) mandates defendants seeking removal of a civil action from the state court to a federal court to sign a verified petitfoner pertaining a short and plain statement of the facts which entitled them to removal, and the defendants refuse to abide by the mandate does the federal court have jurisdiction to entertain the civil action, with only the attorney's signature who does not have personal knowledge of the facts.

Where U. S. Magistrate denies petitioner's right to represent herself pertaining to a charge against her for attempting to do so pursuant to Title 28USC1654, does he have absolute immunity from liability notwithstanding whether he had jurisdiction over the petitioner pursuant to Faretta V. California, 415US975; Butz V. Economou, 438US478; and Stump V. Sparkman, 436US951.

STATEMENT OF THE CASE

Petitioner was suppose to have been indicted on January 31, 1978 charged with a one count non-capital offense of obstruction of justice. A warrant was issued by a U. S. District Judge for her arrest who set her bail with conditions on the warrant. The warrant commanded that she be brought forthwith to the U. S. District Court.

On January 31, 1978, approximately 5:00 P.M. petitioner was arrested by U. S. Marshals and taken directly to the Harris County Jail. Petitioner requested that she be taken before a Judge but her request was denied. She was taken the next day before respondent Black. She requested to be taken before the U. S. District Judge who set her bail as the respondent did not have jurisdiction to amend her bond. Petitioner also requested to represent herself pursuant to

an application for the writ of habeas corpus which had been filed on her behalf. Respondents Black and Coney refused to abide by the United States Statutes and petitioner was returned to the Harris County Jail for approximately seven days, and she was forced to retain an attorney in order to get to come to the Federal Court on an initial appearance and to prosecute her application for the Habeas Corpus. Respondent Black then amended the bond and requested $2,000, and when petitioner refused to pay the amount, as she was entitled to be released on her personal recognizance, respondent Black sent her back to the Harris County Jail, until a federal judge finally released her approximately 15 days later. Many of petitioner's constitutional rights were violated by the respondents.

On October 2, 1978 petitioner filed a Damage Action in Trespass in the Harris

County, Texas, Judicial District against respondents Black and Coney. The action alleged common law trespass of false imprisonment, false arrest (The arrest warrant was not supported by a visible Oath or affirmation), libel and slander, and violations of constitutional rights. The claims were matters which the State of Texas protect by virtue of tort laws, providing a forum for such interests by means of damage actions and injunctive relief. The action was removed to the federal court by the respondents. Petitioner claimed the following in her state lawsuit:

1. Malicious trespass.

2. That the action arose under common law as guaranteed by the Texas and Federal Constitution and The "Bill of Rights" of the Texas and United States Constitutions.

3. That she had been arrested and

falsely imprisoned by a federal warrant unsupported by Oath or affirmation in violation of the 4th Amendment.

4. That even should the illegal warrant had been legal, the petitioner was to be brought immediately before the Court who set the bail and to be released on her personal recognizance.

5. That the respondents Norman W. Black (U.S. Magistrate), and T. R. Coney (U.S. Marshal), in a totally false and malicious scheme, conspired and did willfully block the petitioner from appearing before the proper federal court in order for her to be released on her personal recognizance. That respondent Black demanded $2,000 from petitioner in exchange for her freedom from the incarceration. That respondent Coney aided and abetted respondent Black in their scheme and conspiracy.

6. Respondent Black presided over a

Habeas Corpus hearing, in absence of all jurisdiction, even though his jurisdiction was repeatedly challenged, depriving petitioner of equal protection of the law and causing her false imprisonment for 22 days (when she was released on her personal recogizance by a federal Judge).

7. Respondents Black and Coney engaged in a conspiracy against the petitioner which caused her to be falsely imprisoned 22 days, caused her to be put in solitary confinement in the Harris County jail without due process of law, hearing, etc., in order to punish her which was pre-trial punishment on a charge which she was presumed to be innocent until proven guilty, and later she was acquitted of the charge. Yet, she suffered injury of false imprisonment, false arrest , loss of reputation, inter alia.

8. Respondents caused her to be handkuffed, chained (waist and ankles) to a convicted prisoner, a tall black woman with an

"afra" hair do, and forced the petitioner to be seen that way on the streets in Houston.

9. Respondent Black blocked the petitioner from representing herself in a hearing, knowing she had a constitutional and statutory right (Title 28 USC 1654) to represent herself.

10. Respondent Black willfully, in absence of all jurisdiction, blocked the petitioner from being taken to the proper federal court to answer the warrant (which said she was to be brought forthwith), he blocked her from being taken to the proper court for a hearing on her application for the Writ of Habeas Corpus (which had been filed on her behalf) and after she had been brought to the federal courthouse for that reason; and after she announced she would represent herself he ordered her to be sent back to the Harris County Jail.

11. Respondent Black conspired with

others to send the petitioner to another county, Galveston, Texas, for a hearing on the charge and on another application for the Writ of Habeas Corpus. He did this so her potential attorney and her friends could not find her. Respondent Black directed these happenings, totally in absence of jurisdiction, and even if he had jurisdiction Title 28 USC 124 (b) expressly prohibits Harris County cases from being heard in other counties, for the civil part, Title 28 USC 1404 (a), also expressly prohibits the same, specifically for respondentBlack's reasons. Hauling her to another county (90 miles there and back) endangered her life since petitioner was handkuffed and chained.

12. Respondent Black caused petitioner to be falsely imprisoned, put in solitary confinement at the Harris County Jail 14 days, chained to a convict on the streets of Houston, slandered, inter alia, without

any authority.

The trial Court issued five orders, one a final judgment, pertaining to the dismissal of this case, which are hereto attached.

The trial Court denied petitioner's motion to remand this case on the grounds that petitioner's complaint in the state court was at all times relevant to respondent Conley acting under color of his authority, notwithstanding, respondents did not show their authority in their motion to dismiss. Petitioner's arguments that Title 28 USC 1446 (a) was violated was totally ignored by the trial Court. The trial Court's Order says respondent Black was absolute immune from civil liability for his judicial acts pursuant to Butz V. Economou, 57 L.Ed.(2d) 895, 917 and Pierson V. Ray, 386 US 547. The respondents nor the trial Court discussed the issues of this case that respondent Black acted in absence of

all jurisdiction, and since an oral hearing was denied to the petitioner there was no forum to discuss the issues. The respondents nor the trial Court cited any federal laws, whatsoever, showing respondents had authority to do the acts alleged herein.

The trial Court refused to consider the facts raised in petitioner's complaint that the respondents had no federal authority nor Court Orders they were pursuing under. The trial Court refused to consider the fact issue of conspiracy, inter alia listed in the petitioner's case. The trial Court dismissed the lawsuit by granting respondents' motion for summary judgment and without an oral hearing. The trial Court's action violated Rule 56, Federal Rule of Civil Procedure, and the rule of this Court.

In addition to the trial Court's violation of Rule 56, FRCP, and the rule of this Court, the trial Court's Orders, for the purposes of the dismissal on a motion for

summary judgment, say the material allegations of the lawsuit are taken as admitted. The trial Court is saying the respondents have a right to have a right to have their motion for summary judgment granted without a hearing even though the respondents did the following:

(1). Respondent Black, absence of all jurisdiction, gave oral orders or directions (Since respondents did not furnish any written orders or directions) to incarcerate the petitioner because she demanded the right to represent herself in a scheduled Habeas Corpus hearing forcing her to retain the services of an inexperienced attorney who came to her cell, caused here thereafter to be put in solitary confinement in the Harris County Jail for 14 days, without due process of law, without a hearing, nor was she notified of the reason for being punished, and petitioner was blocked by respondent Black

and Coney from being taken to the proper federal Court. (2) Respondent Black directed and supervised petitioner's incarceration without authority of any law, which included her being chained to a convict, waist and ankles, on the streets of Houston. Yet, she was presumed to be innocent of any charge against her until proven guilty. Petitioner was eventually acquitted by her peers of the one charge against her. (3). Respondent Black's actions alleged in petitioner's lawsuit were expressly forbidden by the U.S. Statutes and the laws of Texas. (4) Respondent Black presided over petitioner's application for the Writ of Habeas Corpus without any authority and which his jurisdiction is prohibited in Title 28 USC 2243. His jurisdiction was repeatedly challenged. (5) Respondent Black constructed an order for petitioner's husband to pay $2,000 before petitioner could be

released under color of the application for Habeas Corpus. When petitioner refused, he ordered her incarcerated again and slandered her name in open court. (6) Respondents Black and Coney engaged in a conspiracy against the petitioner to have her chained to a tall Black woman convict to punish her because she attempted to represent herself and ordered her confined to the Harris County Jail in solitary confinement for 14 days. Respondent conspired to take her to another county so her friends and potential attorney could not find her and did cause her to appear in Galveston, Texas on February 10, 1978, at the federal courthouse in chains, endangering her life, All in violation of Title 28 USC 124. (7) Respondent Coney aided and abetted respondent Black in the above acts even though petitioner reminded him the acts were unauthorized by law.

The trial Court is saying in Its Order

even though the above allegations are true petitioner is not entitled to relief under the laws of this land nor is petitioner entitled to a hearing. Petitioner's lawsuit was dismissed by mail by the U. S. District Court.

Qualified immunity is a fact issue for a trier of facts and a lawsuit cannot be dismissed by mail on the grounds a party has qualified immunity.

This Supreme Court has determined whether respondents' qualified immunity shields the acts at issue in this case requires a more complete record than the respondents' affidavits. An assertion of a qualified immunity would have to be accompanied by further factual presentation concerning such matters of what the respondents knew about the nature of the allegations against them.

The respondents did not develop these matters in the District Court by their one sheet affidavits, but, consistent with

their assertion of an absolute immunity, forcused their presentation on alleging that the respondents were acting in an official and judicial capacity.

Summary judgment is a device available for suits when there are no disputed material facts, but when the controversy turns on absence of jursidiction, official knowledge and good faith belief - matters on which much of the relevant evidence will be/given by officials-the challenging party must be the opportunity to show genuine dispute as to the facts that are material under appropriate legal principal.

The trial Court did not make findings as to Its Jurisdiction of the federal questions raised. Petitioner's lawsuit, on its face, implied a federal question pursuant to 28 USC 1331 (a). Title 28 USC 1331 (a) was automatically invoked pursuant to the respondents' Petition For Removal and the same was brought to the attention of the Court.

The action against the respondents include common law tort claims as well as claims arising directly under the Constitution. The latter claims are within the jurisdiction conferred by Title 28 USC 1331 (a) of the amount in controversy exceeded $10,000. In the lawsuit petitioner's demand for money damages exceeded $10,000.

Even though the trial Court granted respondents' motion for summary judgment it was granted on the grounds that petitioner failed to state a claim. However, even failure to state a claim did not deprive the trial Court of its "federal question" jurisdiction pursuant to 28 USC 1331 (a).

The actions against the respondents for redress of deprivation of constitutional rights arose directly under the Fourth and Fifth Amendments and were within the federal question jurisdiction of the trial Court, the trial Court also had pendent jurisdiction over the common law

claims stated against the respondents.

The trial Court was to liberally construde this case in favor of petitioner. The trial Court actually dismissed the case on the pleadings. Even though the trial Court mentioned qualified immunity for respondent Coney, the respondent Coney actually was given absolute immunity because he did not have to prove he acted without malice and without realizing that his conduct would violate the petitioner's rights. The absolute immunity defense is not available to law enforcement officers performing police duties such as making arrests. These principals apply whether the action is a common law tort suit or a Bivens-Type Constitutional suit. A qualified immunity defense calls for an evidentiary hearing with proof. The allegations in the petitioner's lawsuit with an affidavit conflict with the trial Court's Order. The trial Court could not rely on the respondents'

affidavits which did not conform to the requirements of Rule 56, FRCP, and the only recognized pleading before It was petitioner's which the lawsuit, on its face, states a claim upon which relief could be granted.

The federal official respondents may not receive no greater degree of protection from constitutional and common-law claims than their counterparts in state government. (Butz, Supra.)

Respondent Black acted in total absence of jurisdiction, and his acts are prohibited by express statutes, at the most respondent Black has only qualified immunity. Even if he had jurisdiction over some of his actions (which petitioner claims he did not and the respondents have not furnished laws in their affidavits showing he did), he would only have qualified immunity, because he did things that are expressly forbidden by United States

Statutes.

Respondent Black and Coney had no authority to suspend normal pre and post arrest procedures that allow individualized determinations for every citizen.

Respondents' Petition For Removal was invalid as it violates Title 28 USC 1446 (a), it is not verified by the respondents, nor does it list a set of facts showing respondents were entitled to have the complaint moved to the U. S. District Court, thus foreclosing jurisdiction of the trial Court.

On November 13, 1979, the trial Court denied petitioner's motion to remand to the State Court, and the trial Court grand respondent's Motion For Summary Judgment pursuant to Rule 56, FRCP, without an oral hearing. The U. S. Court of Appeals For The Fifth Circuit affirmed the trial Court's Final Judgment without an opinion, and petitioner's Petition For Rehearing In Banc

was denied on January 13, 1981.

REASONS FOR ALLOWANCE OF WRIT

The trial Court and The United States Court of Appeals For The Fifth Circuit has denied petitioner access to the machinery of the Court to redress her grievances by each Court's action in this case. The said Court has decided a federal question of great substance not theretofore determined by this Court, and have decided it in a way not in accord with applicable decision of this Court.

A.

In the absolute power vested in the U.S. Attorney and Judge to issue an arrest warrant not supported by a visible Oath or affirmation, Rule 9, Federal Rules of Civil Procedure is unconstitutional and void, on its face, as inherently violative of the Fourth Amendment to the U. S. Constitution, and the Fourth Amendment protection

guaranteed against enroachment by the U. S. Constitution and Article 1, Section 19 of the Texas Constitution.

The fatal flaw of Rule 9 is that in its in-built potential of control by the U. S. Attorney and Judge over any person sought by them, it is inherently violative of the separation of powers and independence of the Grand Jury. For example, what would stop the U. S. Attorney from taking the foreman of the Grand Jury for a cup of coffee and enticing him to sign a prepared indictment independent from the Grand Jurors' votes. In the alternative what would block the U. S. Attorneyfrom forging a foreman's name. An indictment supported by visible oath protects citizens and the above are reasons why such language (Supported by Oath...) appears in the Fourth Amendment.

The cardinal principal laid down by this Court of long vintage, is that the Consti-

tutionality of a measure depends not on the degree of its exercise but on its principle. (Providence Bank V. Billings, 29 US 514, 7 L. Ed. 939).

In Stuart V. Palmer, 74 N. Y. 183, 189, the New York Court of Appeals long ago followed the same seminal test of constitutionality:

> "The constitutional validity of law is tested, not by what has been done under it, but by what may by its authority be done".

Accord: Rosalsky V. State, 254 NY 112

The principle enunciated in Stuart V. Palmer, supra. has been quoted with approval by this Court in Montana Co. V. St. Louis Mining & Co., 152 US 160, 169 (1894); also, Farmer Grain Co. V. Langer, 273 F. Rep. 635, 647 (1921).

In the absence of any guide of a statute by what is possible under it, it might well happen that an administrative officer with the best purposes would nevertheless

be very fallible in the execution of them. Here where the "whole power" has been unconstitutionally vested in the hands of the executive, the Rule is intrinsically violative of the Fourth Amendment and of the separation of powers. The doctrine of Separation of Powers in our constitutional system of government by checks and balances is a "bulwark against tyranny", (United States V. Brown, 381 U.S. 437). Accord: (O'Donohue V. U.S. 289 U.S. 516).

The Fourth Amendment protects the privacy of citizens against unreasonable and unrestrained intrusion by Government officials and their agents. It is not theoretical. It lies at the heart of our free society. As this Supreme Court recently remarked, "no right is held more sacred," Terry V. Ohio, 392 U.S. 1, 9, 88 S. Ct. 1868, 1873, 20 L. Ed.889 (1968), quoting from Union Pacific R. Co. V. Botsford, 141 U.S. 250, 251. Indeed,

the American Revolution was sparked in part by the complaints of the colonists. James Otis famous argument in Lechmere's case, challenging the writ without probable cause supported by Oath or affirmation as a "monster of oppression" and a "remnant of Star Chamber tryanny." solved one of the seeds of the coming rebellion. The Fourth Amendment was framed against this background; and every state in the Union, by its own constitution, has since reinforced the protections and the security which that amendment was designed to achieve.

When officials have attempted to justify law enforcement methods that ignore the strictures of this amendment on grounds of necessity or unconstitutional rules or statutes, such excuses have proven fruitless, for the constitution brands such conduct as lawless, irrespective of the end to be served. Coolidge V. New Hampshire, 403

U. S. 443, 91 S. Ct. 2022, 29 L. Ed. (2d) 564 no right so fundamental should now, after the long struggle against governmental trespass, be diluted to accommodate conduct of the very type the amendment was designed to outlaw.

By the unsupported oath or affirmation of an alleged indictment the Fourth amendment rights of the citizenry is automatically subjugated to the control, whim and caprice of the executive. This also puts the executive "implacably" in control of judicial action." In a court of justice so heavily stacked against the accused, with the executive holding the strings of both the judge and prosecutor, the elemental civil rights are hopelessly comprised.

In no other instance under Texas and the United States laws is a warrant issued unsupported by a visible oath or affirmation. An indictment should be supported by a visible oath or affirmation, and if

not in writing, it should be supported by Oath in open court when an indictment is returned effecting a public court record. The practice in the federal courts pertaining to indictments does not require the grand jury to take an oath in open court they have returned an indictment, nor does the foreman have to take an oath that the required number of jurors voted to indict. Many times the judicial officer, magistrate or judge, do not even know whether the persons standing before them are grand jurors. One can see that a person could be prosecuted on a forged indictment as one is not protected by the Fourth Amendment in the federal courts.

B.

RESPONDENT NORMAN W. BLACK DOES NOT HAVE ABSOLUTE IMMUNITY IN THIS CASE; AT THE MOST HE WOULD HAVE A QUALIFIED IMMUNITY; IN THE ALTERNATIVE HE HAS NO IMMUNITY AT ALL BECAUSE HE ACTED IN ABSENCE OF ALL JURISDICTION OVER THE PETITIONER

Respondent Black caused petitioner to be deprived of her liberty by continued false imprisonment, refused to allow her to be her own counsel, caused her to be put in solitary confinement, inter alia, and he presided over a Habeas Corpus hearing with/out jurisdiction besetting by judicial irregularities petitioner's rights to access to the Courts and to reprsent herself. The above acts of Respondent Black were unauthorized by law and expressly forbidden by statutes and the U. S. Constitution. The Supreme Court said in Butz, 438 US 478:

> "Neither Barr V. Mateo, 360 US 564 Spalding V. Vilas, 161 US 483, supports petitioners' contention that all federal officials sued in this case are absolute immune nor did either of those cases in this case are absolute immune...nor did either of those cases purport to abolish the liability of federal officers for actions manifestly beyond their line of duty; if they are accountable when they stray beyond the plain limits of their statutory authority, it would be incongruous to hold that they may nevertheless willfully of knowingly violate constitutional rights with-

out fear of liability."

The Butz Court further said:

> "It may be inferred that had the release been unauthorized, and surely if the issuance of releases had been unauthorized ... had been expressly forbidden by statute, the claim of absolute immunity would not have been upheld."

The defendant in Spalding, Supra., was given immunity when engaged in the discharge of duties imposed upon them by law. The one defendant in Butz, Supra. was given absolute immunity on the same grounds given judges. However, that same Court, Butz, Supra., and speaking of the decision in Spalding, Supra., said:

> "If...it had been expressly forbidden by statute the claim of absolute immunity would not have been upheld...If any inference is to be drawn from Spalding in any of these respects it is that the officials would not be excused from liability if he failed to observe obvious statutory or constitutional limitations on his powers".

Respondent Black deprived petitioner of her right pursuant to Title 28 USC 1654

and her First, Fourth, and Fifth Amendment rights. When respondent Coney brought the petitioner to respondent Black who was a U. S. Magistrate, acting as a judicial officer, the petitioner did not voluntarily submit to the jurisdiction of respondent Black to deal with the issues in her application for the Writ of Habeas Corpus. No process had issued justifying respondent Black's actions to preside over the hearing, to attempt to collect 2,000 dollars from her, to direct her to be incarcerated in solitary confinement, to block her from the proper federal court, inter alia, herein listed. Even the illegal warrant should it had been legal charging plaintiff with a non-capital offense did not give respondent Black acting as a judicial officer, jurisdiction in any proceeding to hear and determine her rights to the writ, nor did it give respondent Black authority to conspire against her and to punish her. The Supreme Court in Butz,

Supra. has mandated the respondents are not immuned when they have acted in violation of a limitation placed upon their conduct by a United States Statute and the United States Constitution. The Supreme Court said in State of Pennsylvania V. Whelling Bridge, 13 How. 518-563; Ex Parte Bollman, 4 Cranch 75, 93:

> "Federal Courts have no common law jurisdiction in cirminal cases, nor can such courts proceed to try and punish any offender, except when authorized by an Act of Congress, passed in pursuance of the Constitution."

Respondent Black violated the following United States Statutes: Title 28 USC 631 and 636 limit U.S. Magistrates to duties listed therein. Title 28 USC 2241 expressly says an evidentiary hearing must be held by a federal judge personally. Title 28 USC S 636 (b) precludes district judges from assigning pre-conviction applications for the Writ to a U. S. Magistrate, and a U.S. Magistrate is limited to only post-conviction hearings for the writ. Local

Rules for the Southern District of Texas pertaining to U. S. Magistrates, Dated May 1977, expressly limited a U.S. Magistrate to post-trial relief on applications for the writs. The Local Rules expressly said any additional duty was not to be inconsistent with the Constitution and laws of the United States. See 1978 Local Rule for Southern District of Texas regarding duties of U.S. Magistrates.

Title 28 USC 1654 says:

> "In all courts of the United States the parties may plead and conduct their own cases personally or by counsel..."

When petitioner announced she would be her own attorney, respondent Black ordered her to be sent back ot jail and she was left there until she was forced to retain an inexperience attorney who came to her cell.

> "While the doctrine of judicial immunity extends to courts,... when a magistrate acts wholly without jurisdiction, civil liability attaches for his

malicious oppression of any person under the pretense of acting in his official capacity". Osherkoff V. Mallory, 188 NW (2d) 294; 64 ALR (3d) 1242 (may be considered pursuant to Title 28 USC 1652 in this Civil Case).

"...mere presence of the (person) in a ... court in answer to a criminal charge did not give the magistrate jurisdiction in any proceeding to hear and determine property rights." Osherkoff, Supra.

The Supreme Court in Butz, Supra., mandates that when public officials who have an absolute immunity status knowingly violates laws which limit their authority they cannot claim absolute immunity.

This Supreme Court said in Stump V. Sparkman, 98 S. Ct. 1099, at 1100:

"In view of broad jurisdiction grant ... and in view of absence of either statute or case law foreclosing such consideration, ...court judge had jurisdiction."

The mandate in Stump, Supra., implies if a judge acted when a statute foreclosed his doing so, he acted in absence of jurisdiction even though he had general jurisdiction.

The U. S. Court of Appeals For the Fifth Circuit said in Sparks V. Duval County Ranch Co., Inc., 604 F(2d)976.

> "Rules of judicial immunity from damages, with its single bright-line exception, Viz., a judge is not protected if he acts' clear absence of all jurisdiction,' is a broad as, but no broader than necessary."

In Apton V. Wilson, 506 F2d 83, (a case cited in Butz, Supra.) that Court said:

> "A judge is not liable for any injuries resulting from his acts within his jurisdiction... unless he acts without color of authority."

C

THIS COURT HAS FORECLOSED SUMMARY JUDGMENT DISMISSALS ON THE PLEADINGS WITH DISPUTED QUALIFIED IMMUNITY ISSUES

The respondent Coney and the trial Court declared respondent Coney has a qualified immunity defense yet the trial Court refused to compel the respondent Coney to show he was acting sincerely and with a belief that he was doing right. This Supreme Court has

delineated the considerations which must be made in resolving this issue:

> "It is the existance of reasonable grounds for the belief that cause of action existed formed at the time and in light of the circumstances coupled with good faith that affords a basis for qualified immunity." Scheuer V. Rhodes, 416 US at 247,248.

There can be no doubt that respondent Coney has a qualified immunity defense available to him, a privilege based on good faith and reasonableness, but that burden is on the respondent Coney to prove it. (Pierson V. Ray, 386 US at 555-557, Bivens V. Six Unknown, 456 F(2d)at1347-1348). In Bivens, Supra 406US961, Court said:

> "It is a valid defense to allege and prove that the ... federal officer acted in the matter complained of in good faith."

Respondent Coney did not even attempt to prove he acted in good faith. The U. S. Court of Appeals For The Fifth Circuit in Rodriguez V. Ritchey, 539 F(2d)394, said:

"In action against...FBI agent...issue of material existed as to whether agent reasonably should have known that his actions would violate plaintiff's constitutional rights, precluding summary judgment."

The Fifth Circuit Court of Appeals said in Sims V. Adams, 537F(2d)829:

"The qualified immunity or good faith defense available ... is one which turns on the circumstances and motivation of the defendant, and it ... requires some evidentiary hearing."

That Court said in Weir V. Muller, 527 F (2d)872:

"We note however that if the district court should hold that the complaint states a cause of action, an evidentiary hearing will probably be necessary to resolve the factual issues on which the qualified immunity doctrine is based. See Scheuer V. Rhodes, 1974, 416 US 232; Mark V. Groff, 521 F2d 1380.:

That Court is saying in Weir, Supra., that the qualified immunity doctrine is based on factual issues. The trial Court said respondent Coney had qualified immunity, yet the trial Court dismissed this cause by granting the respondent's motion for summary judgment.

The trial Court dismissed this case without a hearing and merely on the pleadings. A Court in Fine V. Paramount Pictures, 171 F2d 571, said:

> "In an action for false imprisonment against the FBI and an Assist. U.S. Attorney, whether the defendants were acting lawfully, so as to be immuned to plaintiff's claim ... could not be determined on the pleadings."

and the U. S. Court of Appeals For the Fifth Circuit said:

> "All that is necessary to establish false imprisonment is that on individual be restrained of his liberty under the probable imminence of force without any legal cause or justification." Nesmith V. Alford, 318 F2d 110.

The trial Court granted respondents' Motion for Summary Judgment. The procedural provision for motions for summary judgment is Rule 56, Federal Rules of Civil Procedure, which says:

(a) A hearing must be held and the opposition must be notified when the hearing is set, Rule 56, (c), FRCP.

(b) Affidavits must be made on personal knowledge, and must set

> forth such facts as are admissible in evidence and must show that the affiant is competent to testify to the matters stated therein,Rule 56(e),FRCP."

A careful review of the trial Court's action will show the trial Court Judge refused to consider the provisions in Rule 56,FRCP, above listed, even though the petitioner brought the matter to the attention of the Court when petitioner replied to the respondents' motion which was granded.The Fifth Circuit Court of Appeals' decision conflicts with other decisions in that Court,such as:

> "Rule 56(c),provides that the Motion for Summary Judgment shall be served at least 10 days before the time fixed for a hearing. This Court interpreted Rule 56 (c) as requiring notice to the adverse party and a hearing." Bon Air Hotel V. Time, Inc., 426 F(2d) at 863

Petitioner was not permitted a hearing nor notice

D.

IS NOT TITLE 28US 1654 BINDING

ON RESPONDENTS PURSUANT TO THE U.S. CONSTITUTION AND THE RULE OF LAW IN FARETTA V. CALIFORNIA, 415US975

This Court said in Stump V. Sparkman, 436 US951:

> "In view of broad jurisdiction ...or case law foreclosing such consideration,.. court judge had jurisdiction."

Petitioner alleged not only did respondent Black not have jurisdiction over her person but also he did not have jurisdiction to deny her right to represent herself pursuant to U.S. Statutes and the rule of law by this Court in Stump, Supra., According to this Court even should resondent have had jurisdiction over petitioner this Court foreclosed him from denying her right to represent herself because respondent Black violated the case law in Faretta,Supra., Also, in Butz,Supra., this Court said:

> "It may be inferred that had the release been unauthorized and surely if the issuance of releases had been expressly forbidden by statute, the claim of absolute immunity would not have been upheld."

Finally, petitioner urges upon the Court that the substantial constitutional issues remain viable because they involve questions of the highest public importance. The Final Judgment and Affirmance in this cause by the lower Courts are in conflict with mandates of this Court:

Butz V. Economou, 438 US 478 (Pertaining to absolute and qualified immunity)

Scheuer V. Rhodes, 416 US 247 (Pertaining to immunity)

Stump V. Sparkman, 436 US 951 (Pertaining to Immunity)

Faretta V. California, 415 US 975 (Pertaining to the right to represent oneself)

Bivens V. Six Unknown 406 US 96 (Pertaining to qualified immunity)

Pierson V. Ray, 386 US 547 (Pertaining to immunity)

Poller V. Columbia Broadcasting System 368 US 464 (mandates summary judgment, pursuant to Rule 56, FRCP, is precluded where there are factual issues, and the rule does not cut litigants off from their right of trial by jury)

Terry V. Ohio, 392 US 1 (mandates the Fourth Amendment to the U. S. Constitution protects the privacy of citizens from warrants unsupported by visible oath)

The Court of Appeals For The Fifth Circuit's decision of affirmance in this case is in conflict with other decisions in its Court:

Bon Air Hotel V. Time, Inc., 426 F(2d)863,(Rule 56, FRCP)

Rodrizuez W. Ritchey, 539F(2d)394(Pertaining to Rule 56)

Sparks V. Adams, 604 F (2d) 976 (pertaining to judges who act in absence of jurisdiction do not have absolute immunity)

Sims V. Adams, 537 F (2d) 829 (Pertaining to qualified immunity disputed issues are factual and may not be dismissed on the pleadings).

Weir V. Muller, 527 F (2d) 872 (Pertaining to immunity)

CONCLUSION

The Petition For A Writ of Certiorari should be granted.

Ms. L. Weber

MS. L. WEBER, PETITIONER
IN PROPRIA PERSONA
5240 Leeland
Houston, Texas 77023

PROOF OF SERVICE

Three copies of the foregoing has been sent by the U. S. Mail to counsel for respondents, James Gough, AUSA, P. O. Box 61129, Houston, Texas, 77208 on this 12th Day of June, 1981.

Ms. L. Weber

MS. L. WEBER

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

UNIT A

NO. 80-1162
SUMMARY CALENDAR

NON
PUBLISH

L. WEBER,

Plaintiff-Appellant,

VERSUS

NORMAN L. BLACK and
T. R. CONEY,

Defendant-Appellees.

APPEAL FROM THE UNITED STATES DISTRICT
FOR THE SOUTHERN DISTRICT OF TEXAS

(NOVEMBER 17, 1980)

Before AINSWORTH, GARZA AND SAM D. JOHNSON,

Circuit Judges.

PER CURIAM: AFFIRMED. See Local Rule 21.[1/]

1/ See N.L.R.B. v. Amalgamated Clothing Workers of America, 1970, 430 F. 2d 966.

APPENDIX B

UNITED STATES COURT OF APPEALS

Gilbert F. Ganducheau
Clerk

FIFTH CIRCUIT
OFFICE OF THE CLERK

Tel 504-589-6514
600 Camp Street
New Orleans, La

January 31, 1981

TO ALL PARTIES LISTED BELOW:

No: 80-1162 - L. WEBER -vs- NORMAN L. BLACK, ET AL.
(District Court No. H-78-

Dear Counsel:

This is to advise that an order has this day been entered denying the petition ( ) for rehearing, and no member of the panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Local Fifth Circuit Rule 16), the petition ( ) for rehearing en banc has also been denied.

See Rule 41, F.R.A.P., and Local Rule 17 for issuance and stay of the mandate.

Very truly yours,

GILBERT F. GANUCHEAU, Clerk

By Linda Johnson
Deputy Clerk

cc: Mr. L. Weber
Mr. James R. Gough

Appendix C

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CLERK,U.S. DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS

FILED
OCT. 10, 1979
V. BAILEY THOMAS, CLERK
BY DEPUTY: M. Cook

L. WEBER, §
§
Plaintiff, §
§
V. § CIVIL ACTION No. H-78-2080
§
NORMAN W. BLACK and §
T. R. CONEY, §
§
Defendants §

ORDER

Came on to be heard plaintiff's Motion to Remand to State Court. Having reviewed the pleadings and arguments of counsel, the Court concludes that defendants have stated sufficient facts to bring this case under the Court's removal jurisdiction pursuant to 28 U.S.C. 1446. While the plaintiff is correct that this Court cannot look to the affidavits filed by the defendants more than thirty (30) days after their petition for removal, McGlasson v. Barger, 220

F. Supp. 938 (D. Colo. 1963), the Court finds that a sufficient factual basis for removal to this Court is contained in plaintiff's own complaint which is incorporated by reference in defendant's petition for removal. See Merideth v. Van Oosterhourt, 286 F. 2d 216 (8th Cir. 1960), cert. denied 365 U.S. 835. It is clear from plaintiff's complaint that at all times relevant herein defendant T. R. Coney was actuing under color of a federal arrest warrant and that defendant Norman W. Black was acting under color of his authority as a U. S. Magistrate. Consequently it is hereby ORDERED, ADJUDGED AND DECREED that plaintiff's Motion to Remand to State Court is DENIED.

DONE at Houston, Texas, this 10th day of October, 1979.

Gabrielle K. McDonald

UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CLERK,U.S. DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
FILED
OCT. 10, 1979
V. BAILEY THOMAS, CLERK
BY DEPUTY:

L. WEBER,	‖	
Plaintiff	‖	
V.	‖	CIVIL ACTION NO. H-78-20
NORMAN W. BLACK and T. R. CONEY,	‖	
Defendants.	‖	

ORDER

Came on to be heard defendants' Motion to Dismiss, or in the Alternative for Summary Judgment. The Court having considered the pleadings, affidavits, and arguments of counsel finds that the defendants charged herein are immune from liability.

Defendant Norman W. Black, as a United States Magistrate, is absolutely immune from civil liability for his judicial acts. Butz

v. Economou, U.S., 57 L. Ed. 2d 895, 917 (decided June 29, 1978); Pierson v. Ray, 386 U.S. 547 (1967). It is clear from plaintiff's complaint that Magistrate Black was acting pursuant to his authority to hear and determine any pretrial matter pending before the United States District Court. 28 U.S.C. 636 (b)(1); Local Rule 24 (B). His acts were therefore "judicial acts" and there are no circumstances under which he may be held liable.

Defendant T. R. Coney, as United States Marshal, enjoys a qualified immunity for acts committed within the scope of his jurisdiction and with the authorization of law. Butz v. Economou, supra; Smartv. Jones, 530 F. 2d 64 (5th Cir. 1976). It is clear from plaintiff's complaint that Marshal Coney was acting under color of a federal arrest warrant or pursuant to Magistrate Black's orders. Public officials acting pursuant to a Court directive are immune from suit. Lockhart v. Hoenstein, 411 F 2d 455 (3rd Cir. 1969).

Pursuant to the Court's finding on absolute and qualified immunity for the defendants named herein, it is hereby

ORDERED, ADJUDGED, and DECREED that defendants' Motion for Summary Judgment is GRANTED.

DONE at Houston, Texas, this 10th Day of October, 1979.

Lynette C. McDonald
UNITED STATES DISTRICT JUDGE

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

FILED
OCT. 10, 1979
V. BAILEY THOMAS,
CLERK
BY DEPUTY: M. Cook

L. WEBER, §
§
Plaintiff, §
§
V. § CIVIL ACTION NO. H-78-208
§
NORMAN W. BLACK and §
T. R. CONEY, §
§
Defendants. §

FINAL JUDGMENT

From a consideration of the pleadings and evidence submitted in this case it is the opinion of this Court that there is no dispute as to any material issue of fact and that plaintiff has not shown a right to relief.

Accordingly defendants' Motion for Summary Judgment is hereby GRANTED AND judgment is hereby entered for defendants.

DONE at Houston, Texas, this 10th day of October, 1979.

Daniel H. Thomas
UNITED STATES DISTRICT JUDGE

APPENDIX D

SUPREME COURT OF THE UNITED STATES

NO. A-840

L. WEBER,

Petitioner

v.

NORMAN W. BLACK, ET AL.

ORDER EXTENDING TIME TO FILE PETITION
WRIT OF CERTIORARI

UPON CONSIDERATION of the application of petitioner(s), IT IS ORDERED that the time for filing a petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including June 12, 1981.

/s/ Lewis F. Powell, Jr.
Associate Justice of the
Supreme Court of the
United States

Dated this 3rd
day of April, 1981.